IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 3514 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

AHMEDABAD MUNICIPAL CORPN

Versus

SWAPANA SAKAR STEET LTD

Appearance:

MR KIRIT I PATEL for Appellant

MR NM KAPADIA for Respondent

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE J.R.VORA

Date of decision: 20/02/2001

ORAL JUDGEMENT (Per : MR.JUSTICE M.R.CALLA)

1. This Appeal was admitted by a common order separately passed along with other cognate matters. This First Appeal by Ahmedabad Municipal Corporation u/s 411 of the Bombay Provincial Municipal Corporation Act, 1949, is directed against the order dated 31.3.2000, passed by the Small Cause Court No.10, Ahmedabad, in Municipal Valuation Appeal No. 2432 of 1996 for the year 1995.96 in respect of Survey No. 274/B/B/204 situated in Ward Ellisbridge-A/1 in Ahmedabad.

2. Municipal Corporation had fixed the Gross Rateable Value at Rs. 40,851/- in respect of the premises as aforesaid for the year 1995-96. This decision was challenged before the Small Causes Court by the assessee and the Court reduced the GRV from 40,851.00 to Rs. 22,284.00. The impugned order dated 31.3.2000 shows that the Small Cause Court had placed reliance on the Valuation Report - Exh.8/2` However, there is no dispute that the valuer was not examined by the Assessee and the Municipal Corporation did not get any opportunity to cross-examine the valuer and yet the Court had passed the impugned order.

3. Whereas the factual position that the valuer was not examined, is not disputed by Mr. N.M. Kapadia appearing for the assessee, the case deserves to be remanded and we do not find it necessary to deal with other points which have been raised in the Appeal and all such points will be open to be considered in future, if need be. We accordingly, set aside the impugned order passed in the Municipal Valuation Appeal on 31.3.2000 by the Small Cause Court, Ahmedabad and remand the matter to the Small Cause Court for deciding the Appeal afresh in accordance with law after examining the author of the valuation report which was relied upon. The Municipal Corporation shall be afforded an opportunity to cross-examine such valuer. It will also be open for the Municipal Corporation to move an application before the Small Cause Court u/s 409 of the Bombay Provincial Municipal Corporation Act, 1949 for appointment of an expert if they so choose and on such application if the court feels satisfied, it may order accordingly and decide the matter afresh thereafter. Therefore, the impugned order dated 31.3.2000 is hereby quashed and set aside and the matter is remanded to the Small Cause Court for decision afresh in accordance with law after examining the author of the valuation report and affording opportunity to the Municipal Corporation to cross-examine the author of such valuation report. This

Appeal is partly allowed as above with no order as to costs.

4. It is expected that the Small Cause Court shall give priority to the remanded proceedings in the Appeal and shall decide the same as early as possible preferably within a period of six months from the date the certified copy of this order is produced before the court by either of the parties and to pass appropriate order in accordance with law.

(M.R. Calla, J.)

(J.R. Vora, J.)

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